

WHITE & CASE

LIMITED LIABILITY PARTNERSHIP

UNITED STATES

LOS ANGELES
MIAMI
NEW YORK
WASHINGTON, D.C.

EUROPE

BRUSSELS
BUDAPEST
HELSINKI
ISTANBUL
LONDON
MOSCOW
PARIS
PRAGUE
STOCKHOLM
WARSAW

AFRICA

JOHANNESBURG

1155 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-2787

TELEPHONE: (1-212) 819-8200

FACSIMILE: (1-212) 354-8113

ASIA

ALMATY
ANKARA
BANGKOK
BOMBAY
HANOI
HO CHI MINH CITY
HONG KONG
JAKARTA
SINGAPORE
TOKYO

MIDDLE EAST

JEDDAH
RIYADH

LATIN AMERICA

MEXICO CITY
SAO PAULO

July 13, 1998

Via Facsimile

FEDERAL COUNCIL
OF COPYRIGHT

JUL 14 1998

RECEIVED

The Honorable Lewis Hall Griffith
The Honorable Jeffrey S. Gulin
The Honorable Edward Dreyfus
c/o Gina Giuffreda
Copyright Arbitration Royalty Panel
Library of Congress
Room LM-403, James Madison Memorial Building
101 Independence Avenue, S.E.
Washington, D.C. 20540

Re: Noncommercial Educational Broadcasting
Compulsory License, Docket No. 96-6
CARP NCBRA

Dear Judges Griffith, Gulin and Dreyfus:

We write to call your attention to an unfair statement which appears in Mr. Weiss' letter to the Panel dated July 8, 1998. Therein, he states that Public Broadcasters filed separate submissions for terms of license agreements between Public Broadcasters and ASCAP and BMI, respectively, "because of ASCAP's refusal to agree to a three-party submission."

Having thus opened the door, it is only proper that the Panel know of ASCAP's good faith basis for believing that separate rates and terms should be promulgated for each of ASCAP and BMI, as we explained to Public Broadcasters' counsel.

First, nothing in the statute or regulations prohibits the Panel from establishing separate terms. If anything, Section 118 and agency precedent support the setting of individualized rates and terms for ASCAP. For example, in its 1978 decision, the CRT promulgated separate regulations for license terms between ASCAP and Public Broadcasters. 43 Fed. Reg. 25068, 25070 (June 8, 1978). Merely because Public Broadcasters now have agreed to identical regulations for license terms -- which relate essentially to how they will report on music use to each of ASCAP and BMI -- is really beside the point.

WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

Judges Griffith, Gulin and Dreyfus

Page 2

Moreover, for the last three license periods, ASCAP, BMI and Public Broadcasters have reached separate, voluntary license agreements. As such, there have been no published regulations for the terms or rates of license agreements for the period January 1, 1982 to date. Indeed, the Copyright Royalty Tribunal so noted in its December 29, 1987 Federal Register notice:

"The most commonly asked question of this agency is: How much does PBS and NPR pay ASCAP, BMI and SESAC? The answer is that the Tribunal has no regulations regarding such payments, because they are subject to voluntary license agreements."

1987 Adjustment of the Public Broadcasting Royalty Rates and Terms, Docket No. CRT 87-4 PBRA, 52 Fed. Reg. 49010, 49011 (December 19, 1987).

Throughout this proceeding, ASCAP has submitted evidence as to why and how it is different from BMI. ASCAP and BMI are competitors, their repertoires are different, and each organization has a different way of measuring, valuing and compensating their members for public performances of copyrighted music. ASCAP and BMI have had different and distinct contractual histories with Public Broadcasters over the years. Each license negotiation, including the recent negotiations regarding license terms, has been conducted separately.

Finally, each of ASCAP's negotiations over the years with the representatives of other noncommercial broadcasters -- the American Council on Education, the National Federation of Community Broadcasters and the National Religious Broadcasters Music License Committee -- has been conducted separately. ASCAP, BMI and these groups presented separate proposals for license fee terms and regulations to the Copyright Office and before it, the Copyright Royalty Tribunal.

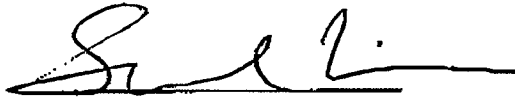
In the final analysis, it is Public Broadcasters which have failed to articulate any valid reason for promulgation of joint regulations for ASCAP and BMI, stating only their personal view that separate regulations are "unnecessary."

For the foregoing reasons, ASCAP urges the Panel to promulgate separate regulations for license terms for Public Broadcasters' use of music in the ASCAP repertory.

WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

Judges Griffith, Gulin and Dreyfus
Page 3

Respectfully submitted,



Philip H. Schaeffer, Esq.
J. Christopher Shore, Esq.
Sam Mosenkis, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, N.Y. 10036-2787
(212) 819-8200

Beverly A. Willett, Esq.
ASCAP Building
One Lincoln Plaza, 6th Floor
New York, New York 10023
(212) 621-6289

Joan M. McGivern, Esq.
ASCAP
One Lincoln Plaza
New York, New York 10023
(212) 621-6204

Attorneys for ASCAP

cc: Jonathan Weiss, Esq.
Michael Salzman, Esq.

UNITED STATES
LOS ANGELES
MIAMI
NEW YORK
WASHINGTON, D.C.

EUROPE
BRUSSELS
BUDAPEST
HELSINKI
ISTANBUL
LONDON
MOSCOW
PARIS
PRAGUE
STOCKHOLM
WARSAW

AFRICA
JOHANNESBURG

WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

1155 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-2787

TELEPHONE: (1-212) 819-8200
FACSIMILE: (1-212) 354-8113

DIRECT DIAL: 819-8424

GENERAL COUNSEL
OF COPYRIGHT

JUL 13 1998

RECEIVED

ASIA
ALMATY
ANKARA
BANGKOK
BOMBAY
HANOI
HO CHI MINH CITY
HONG KONG
JAKARTA
SINGAPORE
TOKYO

MIDDLE EAST
JEDDAH
RIYADH

LATIN AMERICA
MEXICO CITY
SAO PAULO

FACSIMILE TRANSMISSION

Date:	July 13, 1998	No. of Pages (including cover):	4
To:	Gina Giuffreda U.S. Copyright Office	Fax Number: Contact Number:	202-707-8366 202-707-2699
cc:	Jonathan T. Weiss, Esq. Weil Gotshal & Manges		310-8007 310-8000
	Michael Salzman, Esq. Hughes Hubbard & Reed LLP		422-4726 837-6000
From:	Sam Mosenkis		

PLEASE NOTE: The information contained in this facsimile message is privileged and confidential, and is intended only for the use of the individual named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or if any problems occur with transmission, please contact sender or call (212) 819-7583. Thank you.

Please forward the attached letter to the Panel members. Thank you.

Sam Mosenkis